

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

JOWELL C. BULLARD, ET AL. §

Plaintiffs, §

v. §

CIVIL ACTION NO. 2-07CV-049-J

**BABCOCK & WILCOX
TECHNICAL SERVICES
PANTEX, LLC, §**

Defendant. §

**APPELLANT BABCOCK & WILCOX TECHNICAL SERVICES, LLC'S
STATEMENT OF THE ISSUES ON APPEAL**

TO THE DISTRICT CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS, AMARILLO DIVISION:

Pursuant to Federal Rule of Appellate Procedure 10(b)(3)(A), Appellant Babcock & Wilcox Technical Services Pantex, LLC ("B&W Pantex"), files this Statement of the Issues on Appeal and would show the Court as follows:

1. **Issues on Appeal.** Appellant B&W Pantex has filed a Notice of Appeal and intends to appeal, in part, the District Court's Judgment dated August 24, 2009. Appellant B&W Pantex appeals the District Court's determination in the Judgment that the Desk Lieutenant, Administrative Lieutenant, Curriculum Developer, and Fire Lieutenant positions, and the seven (7) employees who held

those positions for some or all of the relevant time period, were willfully misclassified as exempt employees under the Fair Labor Standards Act (“FLSA”). Appellant B&W Pantex does not appeal the District Court’s finding that these job positions and employees were misclassified as exempt, but does appeal the District Court’s finding of “willful” violations of the FLSA. Appellant B&W Pantex also appeals the District Court’s application of a three-year statute of limitations to the claims of all successful Plaintiffs, and the damages awarded to certain successful Plaintiffs in the Judgment as a result of the District Court’s application of a three-year statute of limitations to their claims.

2. **Partial Transcript Requested.** In order to appeal the District Court’s determination of “willfulness,” Appellant B&W Pantex requests a partial transcript of the trial proceedings. The trial in this cause began on Tuesday, August 12, 2008, and concluded on Wednesday, August 20, 2008.

In addition to the record, Appellant B&W Pantex requests the following trial testimony, as well as all exhibits admitted during this testimony:

- i. Testimony of James Martinez and Dale Morgan on Wednesday, August 13, 2008. According to B&W Pantex’s records, the testimony for both witnesses was transcribed by Stacy Morrison, Court Reporter for the Northern District of Texas, Amarillo Division.
- ii. Testimony of Richard Fry, Donna Davis, Pam J. Hitt, and Jeanne Hunt on Friday, August 15, 2008. According to B&W

Pantex's records, the testimony for these four (4) witnesses was transcribed by Stacy Morrison, Court Reporter for the Northern District of Texas, Amarillo Division.

- iii. Testimony of Robert Dexter, Brad Chapman, Larry Spaulding, and part 1 of the testimony of Michael Brock. According to B&W Pantex's records, the testimony for these four (4) witnesses was transcribed by Lisa Thrash.
- iv. Part 2 of the testimony of Michael Brock and the testimony of Stacy L. Grant. According to B&W Pantex's records, the testimony for both of these witnesses was transcribed by Shirley Headings.

3. **Submission of Transcript Orders.** Appellant B&W Pantex has submitted Transcript Orders (N.D.T.X. Civil Form DKT-13) to Stacy Morrison, Lisa Thrash, and Shirley Headings via e-mail. A copy of the Transcript Orders are attached as Exhibits "A," "B," and "C" and are herein filed with the District Court Clerk pursuant to Federal Rule of Appellate Procedure 10(b)(1)(A)(iii).

Respectfully submitted,

Bradley W. Howard
State Bar No. 00786452
Robert C. Vartabedian
State Bar No. 24053534
BROWN & FORTUNATO, P.C.
905 South Fillmore, Suite 400 (79101)
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bhoward@bf-law.com Email

By: /s/ Bradley W. Howard
Bradley W. Howard

**ATTORNEYS FOR APPELLANT,
BABCOCK & WILCOX TECHNICAL
SERVICES PANTEX, LLC**

CERTIFICATE OF SERVICE

I certify that on the 27th day of April, 2010, I electronically filed the foregoing with the Clerk of the Court in the United States District Court for the Northern District of Texas, Amarillo Division, using the electronic case filing system of the court, which will send notification of such filing to the following:

Michael A. Warner
The Warner Law Firm
101 S.E. 11th, Suite 301
Amarillo, TX 79101

Jason C. Webster
Matthews & Associates
2905 Sackett
Houston, TX 77098

**ATTORNEYS FOR APPELLEES,
BULLARD ET AL.**

/s/ Bradley W. Howard
Bradley W. Howard

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**READ INSTRUCTIONS ON BACK OF LAST PAGE BEFORE COMPLETING
TRANSCRIPT ORDER**

District Court Northern District of Texas, Amarillo Division	District Court Docket Number Civil Action No. 2-07CV-049-J
Short Case Title Bullard et al. v. BWXT Pantex	Court Reporter Stacy Morrison
Date Notice of Appeal Filed by Clerk of District Court	Court of Appeals # _____ (If Available)

PART I. (To be completed by party ordering transcript. Do not complete this form unless financial arrangements have been made.)

A. Complete one of the following:

- No hearings
- Transcript is unnecessary for appeal purposes
- Transcript is already on file in Clerk's office
- This is to order a transcript of the following proceedings: (check appropriate box)

Voir dire ; Opening statement of plaintiff ; defendant
Closing argument of plaintiff ; defendant ; Opinion of court
Jury instructions ; Sentencing ; Bail hearing

HEARING DATE(S)	PROCEEDING	JUDGE/MAGISTRATE
August 13, 2008	Testimony of James Martinez and Dale Morgan	Judge Robinson
August 15, 2008	Testimony of Richard Fry, Donna Davis, Pam J. Hitt, and Jeanne Hunt	Judge Robinson

FAILURE TO SPECIFY IN ADEQUATE DETAIL THOSE PROCEEDINGS TO BE TRANSCRIBED, OR FAILURE TO MAKE PROMPT SATISFACTORY FINANCIAL ARRANGEMENTS FOR TRANSCRIPT, ARE GROUNDS FOR DISMISSAL OF THE APPEAL.

B. This is to certify that satisfactory financial arrangements have been completed with the court reporter for payment of the cost of the transcript. The method of payment will be:

- Private funds; Criminal Justice Act Funds (Attach copy of CJA Form 24 to court reporter's copy);
- Other IFP Funds; Advance Payment waived by reporter; U.S. Government Funds;
- Other

Signature		Date Transcript Ordered April 27, 2010
Print Name	Robert C. Vartabedian	Counsel for B&W Pantex (Defendant/Appellant)
Address	905 S. Fillmore, Suite 400, Amarillo, TX 79105	Phone Number 345-6309

**ALLOWANCE BY THE COURT FOR LEAVE TO PROCEED IN FORMA PAUPERIS IN A CIVIL APPEAL
DOES NOT ENTITLE THE LITIGANT TO HAVE TRANSCRIPT AT GOVERNMENT EXPENSE.**

PART II. COURT REPORTER ACKNOWLEDGEMENT (To be completed by the Court Reporter and forwarded to the Court of Appeals within 7 days after receipt. Read instruction on reverse side of copy 4 before completing.)

Date transcript order received	If arrangements are not yet made, date contact made with ordering party re: financial arrangements	Estimated completion date *	Estimated number of pages

- Satisfactory Arrangements for payment were made on _____
- Arrangements for payment have not been made. Reason: Deposit not received Unable to contact ordering party Other (Specify) _____

Date	Signature of Court Reporter	Telephone
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Address of Court Reporter:		
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* Do not include an estimated completion date unless satisfactory financial arrangements have been made or waived.

PART III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE DISTRICT COURT (To be completed by court reporter on date of filing transcript in District Court and notification must be forwarded to Court of Appeals on the same date.)

This is to certify that the transcript has been completed and filed with the District Court today.

Actual Number of Pages _____	Actual Number of Volumes _____
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District Court Northern District of Texas, Amarillo Division	District Court Docket Number Civil Action No. 2-07CV-049-J
Short Case Title Bullard et al. v. BWXT Pantex	Court Reporter Lisa Thrash
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<u>HEARING DATE(S)</u>	<u>PROCEEDING</u>	<u>JUDGE/MAGISTRATE</u>
August 18, 2008	Testimony of Robert Dexter, Brad Chapman, Larry Spaulding, and Michael Brock	Judge Robinson

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- Other

Signature	<u>Robert C. Vartabedian</u>	Date Transcript Ordered April 27, 2010
Print Name	Robert C. Vartabedian	Counsel for B&W Pantex (Defendant/Appellant)
Address	905 S. Fillmore, Suite 400, Amarillo, TX 79105	Phone Number 345-6309

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District Court

Northern District of Texas, Amarillo Division

District Court Docket Number

Civil Action No. 2-07CV-049-J

Short Case Title Bullard et al. v. BWXT Pantex

Court Reporter Shirley Headings

Date Notice of Appeal Filed by Clerk of District Court

Court of Appeals #

(If Available)

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 Jury instructions ; Sentencing ; Bail hearing

HEARING DATE(S)

PROCEEDING

JUDGE/MAGISTRATE

August 19, 2008

Testimony of Michael Brock and Stacy L. Grant

Judge Robinson

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Signature

Date Transcript Ordered April 27, 2010

Print Name

Robert C. Vartabedian

Counsel for B&W Pantex (Defendant/Appellant)

Address

905 S. Fillmore, Suite 400, Amarillo, TX 79105

Phone Number 345-6309

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